Supreme Court, U.S.
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No. 91-1925

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CITY OF ROCKLIN, THE ROCKLIN MOBILE HOME RENT REVIEW COMMISSION; CARLOS URRUTIA; RUSTY SELIX, RUDOLF MICHAELS; GEORGE PARAS,

Petitioners,

v.

SIERRA LAKES RESERVE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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July 1, 1992

*Application for Admission Pending

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QUESTION PRESENTED

Whether a case is ripe for review by writ of certiorari when the Court of Appeals has remanded the case to the District Court for further proceedings, and the District Court has not yet had the opportunity to consider the effect of this Court's decision in *Yee v. City of Escondido,* 112 S.Ct. 1522 (1992), upon one of several claims asserted in the case.

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Petitioners,

v.

SIERRA LAKES RESERVE,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For the Ninth Circuit

BRIEF IN OPPOSITION

JURISDICTION

Jurisdiction may not be present in that the petition may be untimely. The petition filed on May 1, 1992 was not in proper form, and the amended petition was not filed within 90 days after the Court of Appeals denied petitioners' suggestion for rehearing *en banc.*

STATEMENT OF THE CASE

Respondent Sierra Lakes Reserve ("Sierra Lakes") owns a mobilehome park in the City of Rocklin. All mobilehome parks in the City of Rocklin are subject to rent control. App. to Pet. for Cert., pp. 58-82. The gravamen of Sierra Lakes' complaint is that

petitioners City of Rocklin *et. al.* ("City") engaged in a pattern of arbitrary conduct with respect to the processing of Sierra Lakes' rent increase applications, thereby depriving respondent of due process and equal protection of the law, in violation of 42 U.S.C. section 1983. App. to Pet. for Cert., pp. 16-18. As a separate and distinct claim, Sierra Lakes also alleges that the operation of the City's rent control ordinance constituted an unconstitutional "taking" of Sierra Lakes' property, similar to that found by the Court of Appeals for the Ninth Circuit in *Hall v. City of Santa Barbara,* 833 F.2d 1270 (9th Cir. 1987). App. to Pet. for Cert., pp. 9-12.

In an unpublished order, the United States District Court granted the City's motion to dismiss Sierra Lakes' entire complaint. App. to Pet. for Cert., pp. 24-57. Although the District Court recognized it was bound by the principles of *stare decisis* to follow the Court of Appeals' decision in *Hall v. City of Santa Barbara,* it nevertheless dismissed Sierra Lakes' "taking" claim on ripeness grounds, because Sierra Lakes had not exhausted its state court remedies before seeking relief in federal court. App. to Pet. for Cert., pp. 34-39.

In a published opinion reported at 938 F.2d 951 (9th Cir. 1991), the Court of Appeals for the Ninth Circuit reversed the order of the District Court as to Sierra Lakes' due process, equal protection, and "taking" claims. App. to Pet. for Cert., pp. 2-22. With respect to the "taking" claim, the Ninth Circuit found that Sierra Lakes' claims were ripe, due to the demonstrated inability of California property owners to obtain just compensation in several similar cases. App. to Pet. for Cert., pp. 7-9. On February 3, 1992 the Court of Appeals denied petitioners' suggestion for rehearing *en banc.* App. to Pet. for Cert., p. 23. Approximately two months later, on April 1, 1992, this court issued its opinion in *Yee v. City of Escondido,* effectively overruling the Court of Appeals' decision in *Hall v. City of Santa Barbara.*

No further proceedings have taken place in the District Court or in the Court of Appeals, and neither court has had an opportunity to apply *Yee v. City of Escondido* to this case.

REASONS FOR DENYING THE PETITION

The petition for a writ of certiorari is premature. The Court of Appeals has remanded this case to the District Court for further proceedings. The District Court has not yet had an opportunity to apply this Court's ruling in *Yee v. City of Escondido* to this case. It is possible that the District Court will dismiss Sierra Lakes' "taking" claim, in which event petitioners would have no basis for seeking review in this Court.

In similar circumstances, this Court has stated that a petition for a writ of certiorari was premature "because the Court of Appeals remanded the case, [and it] is not yet ripe for review." *Brotherhood of Locomotive Firemen v. Bangor & Aroostock R. Co.,* 389 U.S. 327, 328 (1967). The same logic requires that the petition in this case be denied.

In addition, Sierra Lakes has asserted due process and equal protection claims that are unaffected by this Court's ruling in *Yee v. City of Escondido.* The Court of Appeals has ruled that Sierra Lakes may proceed with its equal protection and due process claims. App. to Pet. for Cert., pp. 16-18. There is no reason why adjudication of Sierra Lake's other claims should be delayed by petitioners' premature request for a writ of certiorari in this Court.

Finally, it should be noted that petitioners' argument is misleading in at least two respects. First, petitioners imply that the Court of Appeals intentionally failed to follow this Court's ruling in *Yee v. City of Escondido.* To the contrary, *Yee v. City of Escondido* was decided on April 1, 1992, almost two months after the Court of Appeals refused the suggestion for rehearing *en banc.*

Second, the issue before the Court of Appeals with respect to Sierra Lakes' "taking" claim was not whether the City's ordinance resulted in a "taking" of Sierra Lakes' property, but only whether a "taking" claim is ripe for review where a property owner has demonstrated an inability to obtain just compensation in the state courts. App. to Pet. for Cert., p. 9. Since this general

proposition of law remains valid even after *Yee v. City of Escondido,* there is no reason to grant the petition for a writ of certiorari.

Because the District Court is clearly capable of applying this court's decision in *Yee v. City of Escondido* to Sierra Lakes' "taking" claim, while at the same time allowing Sierra Lakes to proceed with its due process and equal protection claims, the petition for a writ of certiorari should be denied.

Dated: July 1, 1992

Respectfully submitted,

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*Application for Admission Pending